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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 BANK OF AMERICA, N.A.,

8 Plaintiff(s),

9 v.

10 CACTUS CREEK AT MOUNTAIN'S
11 EDGE HOMEOWNERS ASSOCIATION et al.,

12 Defendant(s).

Case No. 2:16-CV-606 JCM (CWH)

ORDER

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14 Presently before the court is plaintiff Bank of America, N.A.'s ("BANA") motion for
15 reconsideration. (ECF No. 39). Defendants Premier One Holdings, Inc. ("Premier One") and
16 Cactus Creek at Mountain's Edge Homeowners Association ("Cactus Creek") filed separate
17 responses (ECF Nos. 42, 46), to which BANA filed separate replies (ECF Nos. 43, 47).

18 **I. Facts**

19 This action arises from a dispute over real property located at 10561 Cave Ridge Street,
20 Las Vegas, Nevada 89170 ("the property"). (ECF No. 1).

21 James and Alexis Morris ("borrowers") purchased the property on or about July 23, 2008.
22 (ECF Nos. 1, 27-1). The borrowers financed the purchase with a loan in the amount of \$230,505.00
23 from Countrywide Bank, FSB ("Countrywide"). (ECF No. 27-1). Countrywide secured the loan
24 with a deed of trust, which names Countrywide as the lender, Recontrust Company as the trustee,
25 and Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary as nominee for
26 the lender and lender's successors and assigns. *Id.* On May 20, 2011, BANA acquired all
27 beneficial interest in the deed of trust via an assignment, which BANA recorded with the Clark
28 County recorder's office. (ECF No. 27-3).

1 On October 24, 2012, Cactus Creek, through its agent defendant Nevada Association
2 Services, Inc. (“NAS”), recorded a notice of delinquent assessment lien (“the lien”) against the
3 property for the borrowers’ failure to pay Cactus Creek in the amount of \$842.00. (ECF No. 27-
4 4). *Id.* On December 27, 2012, Cactus Creek recorded a notice of default and election to sell
5 pursuant to the lien, stating that the amount due was \$1,923.04 as of December 20, 2012. (ECF
6 No. 27-5).

7 In an attempt to exercise its right of redemption, BANA requested from Cactus Creek the
8 superpriority amount of the lien. (ECF No. 39-1). Cactus Creek did not reply to BANA’s request.
9 *Id.* BANA, thereby, used a payoff ledger for a different property in the same development to
10 calculate the superpriority amount as \$270.00. *Id.* On March 22, 2013, BANA sent a letter and
11 a check in that amount to Cactus Creek. *Id.* The letter explained that the check was the sum of
12 nine months of common assessments and intended to pay off the superpriority portion of the lien.
13 *Id.* Cactus Creek rejected the check without explanation. *Id.*

14 On August 22, 2013, Cactus Creek recorded a notice of foreclosure sale against the
15 property. (ECF No. 27-6). On September 13, 2013, Cactus Creek sold the property in a nonjudicial
16 foreclosure sale to Premier One in exchange for \$15,100.00. (ECF No. 27-8). *Id.* On September
17 24, 2013, Cactus Creek recorded the foreclosure deed with the Clark County recorder’s office. *Id.*

18 On March 18, 2016, BANA filed the underlying complaint, alleging four causes of action:
19 (1) quiet title/declaratory judgment against all defendants; (2) breach of NRS 116.1113 against
20 NAS and Cactus Creek; (3) wrongful foreclosure against NAS and Cactus Creek; and (4)
21 injunctive relief against Premier One. (ECF No. 1)

22 On May 18, 2017, the court denied BANA’s motion for summary judgment, holding in
23 part that BANA’s attempted tender was insufficient to extinguish the superpriority lien. (ECF No.
24 33).

25 On September 13, 2018, the Nevada Supreme Court issued a ruling clarifying how courts
26 should apply NRS 116.3116 *et seq.* (“Chapter 116”)—the statute that Cactus Creek relied on when
27 it foreclosed on the property. *See Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113,
28 121 (Nev. 2018) (“*Bank of America*”). In light of this intervening change in controlling law, the

1 court now reconsiders its prior order pursuant to BANA's motion for reconsideration (ECF No.
2 39).

3 **II. Legal Standard**

4 A motion for reconsideration "should not be granted, absent highly unusual
5 circumstances." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880
6 (9th Cir. 2009). "Reconsideration is appropriate if the district court (1) is presented with newly
7 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3)
8 if there is an intervening change in controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d
9 1255, 1263 (9th Cir. 1993); *see* Fed. R. Civ. P. 60(b).

10 Rule 54(b) permits a district court to revise an order that does not terminate the action at
11 any time before the entry of judgment. Fed. R. Civ. P. 54(b); *see also Los Angeles v. Santa Monica*
12 *Baykeeper*, 254 F.3d 882, 887 (9th Cir. 2001). However, reconsideration is "an extraordinary
13 remedy, to be used sparingly in the interests of finality and conservation of judicial resources."
14 *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotations omitted). A motion
15 for reconsideration is also an improper vehicle "to raise arguments or present evidence for the first
16 time when they could reasonably have been raised earlier in litigation." *Marlyn Nutraceuticals*,
17 571 F.3d at 880.

18 **III. Discussion**

19 BANA argues that the court should set aside the foreclosure sale because Cactus Creek
20 wrongfully rejected BANA's tender of the superpriority portion of the lien. (ECF No. 39). In light
21 of the Nevada Supreme Court's ruling in *Bank of America*, the court agrees.

22 Under NRS 116.31166(1), the holder of a first deed of trust may pay off the superpriority
23 portion of an HOA lien to prevent the foreclosure sale from extinguishing the deed of trust. *See*
24 Nev. Rev. Stat. § 116.31166(1); *see also SFR Investments*, 334 P.3d at 414 ("But as a junior
25 lienholder, BOA could have paid off the SHHOA lien to avert loss of its security . . ."). The
26 superpriority portion of the lien consists of "the last nine months of unpaid HOA dues and
27 maintenance and nuisance-abatement charges," while the subpriority piece consists of "all other
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1 HOA fees or assessments.” *SFR Investments*, 334 P.3d at 411; *Horizons at Seven Hills*
2 *Homeowners Association v. Ikon Holdings, LLC*, 373 P.3d 66 (Nev. 2016).

3 In *Bank of America*, the Nevada Supreme Court held that a foreclosure sale did not
4 extinguish a first deed of trust when Bank of America, the holder of the deed of trust, used the
5 HOA’s representations to calculate and tender the sum of nine months of delinquent assessments.
6 *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 121 (Nev. 2018). Although the
7 superpriority portion of an HOA lien typically includes maintenance and nuisance abatement
8 charges, the court held that “Bank of America tendered the correct amount to satisfy the
9 superpriority portion of the lien . . . [because] the HOA did not indicate that the property had any
10 charges for maintenance or nuisance abatement.” *Id.* at 118.

11 As in *Bank of America*, Cactus Creek has not indicated that the property had any charges
12 for maintenance or nuisance abatement. See *Bank of America*, 427 P.3d at 118. Thus, when BANA
13 sent a check for nine months of assessments to Cactus Creek, it properly tendered the superpriority
14 portion of the lien. See (ECF No. 59-7). Indeed, it makes no difference that BANA relied on a
15 ledger from a different property subject to the same HOA common assessments to calculate the
16 amount of the superpriority portion of the lien, as BANA tendered an amount that undisputedly
17 represented nine months of assessments. See *Bank of America*, 427 P.3d at 118; see also *Tyrone*
18 *& In-Ching, LLC v. U.S. Bank, N.A.*, 430 P.3d 533 (Nev. 2018); see also *NV Eagles, LLC v.*
19 *Christiana Trust*, 429 P.3d 1254 (Nev. 2018).

20 Therefore, the nonjudicial foreclosure sale did not extinguish the deed of trust. See *Bank*
21 *of America*, 427 P.3d at 121 (“It follows that after a valid tender of the superpriority portion of an
22 HOA lien, a foreclosure sale . . . cannot extinguish the first deed of trust”).

23 **IV. Conclusion**

24 In light of the intervening change in controlling law, BANA is entitled to judgment as a
25 matter of law on its claim for quiet title/declaratory relief. Because this order resolves all pertinent
26 issues in this litigation, the court will enter judgment and close the case.

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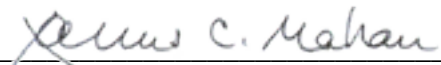
Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that BANA's motion for reconsideration (ECF No. 39) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that the court's order filed in May 18, 2017, (ECF No. 33) be, and the same hereby is, VACATED.

The clerk shall enter judgment accordingly and close the case.

DATED February 5, 2019.


UNITED STATES DISTRICT JUDGE